FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2279 OF 2005

Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's Orders

Mr. Rishi Bhuta for petitioner

Mr. D. R. More, APP for R-1

CORAM: SMT. RANJANA DESAI &
ANOOP V. MOHTA, **JJ.**
DATED: 18/10/2005

P.C.:-

We have heard the learned counsel for the petitioner.

2. In this petition, the petitioner has prayed that proceedings in chapter case No. 31/2005 on the file of Special Executive Magistrate, Andheri (East), Mumbai, be stayed and the order of Special Executive Magistrate directing the petitioner to furnish interim bond be set aside. It is further prayer that chapter case No. 31/2005 and the show cause notice dated 9/9/05 be quashed.

3. Our attention has been drawn to the judgment of the Supreme Court in Madhu Limaye v. S.D.M. Monghyr & Ors., A.I.R. 1971 SC 2486. The bare perusal of the judgment makes it clear that interim bond cannot be asked from a person unless the Magistrate starts the enquiry. The Supreme Court has observed that enquiry should be made before asking interim bond from a person. Therefore, the respondents cannot ask the petitioner to execute an interim bond unless they start theinquiry.

4. We have gone through notice which is annexed at Exhibit "B" to the petiton. We are not inclined to quash the show cause notice. The proceedings must go on but we expect the police to follow the correct procedure. Unless they start the enquiry they cannot ask the petitioner to execute the bond.

5. We, therefore, direct the

petitioner to submit his reply, if any to the respondents and participate in the enquiry. After the inquiry is started, the respondent will be at liberty to direct the petitioner to execute in interim bond which obviously will abide by the final order which will be passed by the respondent. Petitioner shall cooperate with the enquiry.

6. Writ petition is disposed of.

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